UNITED NATIONS

GENERAL ASSEMBLY

Distr:
GENERAL

A/CN.9/409/Add.4
9 May 1995

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW
Twenty-eighth session
Vienna, 2-26 May 1995

DRAFT MODEL LAW ON LEGAL ASPECTS OF ELECTRONIC DATA INTERCHANGE (EDI) AND RELATED MEANS OF COMMUNICATION

Compilation of comments by Governments and international organizations

Addendum

CONTENTS

Page

Intergovernmental international organizations

United Nations Environment Programme (UNEP) 2

V.95-53822

United Nations Environment Programme (UNEP)

[Original: English]

The following information has been compiled from input provided by UNEP ELI/PAC, UNEP/EDPU (Electronic Data Processing Unit) and UNICEF:

General comments

1. The Draft constitutes an important initiative in the field and should be further elaborated.

2. As currently written, the Draft's text is fairly clear and concise.

3. Provisions in the Draft indicate there is a need for more technical input, particularly with regard to electronic mail systems and other varieties of electronic data interchange.

4. Although the Draft addresses some of the important issues in the field, a few provisions could be strengthened/clarified and additional important questions considered by the working group should be resolved/incorporated.

5. The question of how to prevent or minimize fraudulent use of electronic data interchange systems has not been, and should be, adequately addressed.

Specific comments

Title - The reference to "model law on legal aspects" seems redundant. In fact, the document is not a complete model law but rather an incomplete set of model provisions.

Article 1 (sphere of application) - Although the Draft's limitation to commercial law is understandable, its ramifications for other fields should be acknowledged.

Article 2 (definitions) - The definition of "data message" should include "telefax". The definition of "originator" could be made more protective (i.e., to prevent plagiarism). The definition of "intermediary" might include a reference to the provision of "value-added services". A definition for the word "record" as "durable representation of information, either in or capable of being converted into an intelligible form" could be useful.

Article 3 (interpretation) - Is an "interpretation" section needed for a model law? It seems reasonable that this or another section should provide (a) a purpose or objective for the law and (b) an explanation of the principle of party autonomy vis-a-vis the mandatory nature of the model as a statement of minimum requirements. These ideas could be elaborated in the anticipated implementation guide.

Article 4 (legal recognition) - It would be useful to address the incorporation of terms and conditions into a data record by mere reference.

Article 6 (signature) - This section should be further strengthened and elaborated, as this is one of the most critical issues regarding the use of electronic data interchange systems. Reference to "a method" leaves virtually unresolved the question of identity verification.

Article 7 (original) - To determine when a message is created, it might be better to focus on the point of transmittal rather than generation or creation. In this sense, a message is not a message until it is sent. The definition of original should include a reference to those changes which may arise (e.g., additional headers, routers or commands) that do not alter the content of the message. In other words, alterations can occur so long as they do not affect the original content.

Article 9 (retention) - The text does not take into account a system's limitations on storage (e.g., length of time or amount of data) and does not consider the implications of an unanticipated computer disaster.

Article 11 (attribution) - This section does not seem to give adequate consideration to fraudulent activities from whatever sources, e.g., "hackers".

Article 12 (acknowledgement) - The latest e-mail software may lessen problems associated with acknowledgement and receipt (i.e., via automatic indications of receipt). On the other hand, some e-mail software, which allows deletion before receipt, may invalidate the protection afforded by this article. Can a computer system breakdown during the communication process also affect legal obligations?

Article 14 (time/place) - The distinction between creating a message and transmitting it should be very clear. In an e-mail system, it may not be possible to determine the actual time when a message enters an information system. The best indication of receipt is when the message is opened by the recipient. Current language in the text shows an orientation to telefax and telex rather than e-mail systems. Issues concerning (a) whether a system is able to and does deliver a message, (b) whether a message is "intelligible" when it is sent in encrypted, condensed form and (c) whether the addressee wilfully or negligently caused the malfunctioning of its information system are worth addressing in the future. The definition of "place of receipt" does not really take into account the mobility of e-mail (i.e., the ability to access e-mail from a variety of locations).

Article 15 (liability) - There should be a reconsideration of this article in light of the concern regarding fraud expressed by technical personnel.